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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,452	03/26/2004	David W. Galloway	1821-001-03	4007

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EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,452

Applicant(s)

GALLOWAY, DAVID W.

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 20-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 20-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

The disclosure is objected to because of the following informalities: On page 4, at lines 9-13, applicant discloses a measure of strength in terms of g/cm, which is an improper unit for a measure of strength. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what applicant means to claim because the measurements claimed are not proper measurements of strength.

Claim Rejections - 35 USC § 103

Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devro Limited, WO 92/01394 in view of Kojima et al., JP 56137871 A.

In regard to claims 1 and 7, Devro discloses an edible protein matrix for use in creating edible compositions comprising an intermediary film having greater than 50% processed protein by weight (page 6, lines 35-36 and claim 9), which would inherently

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have the strength claimed by applicant. Devro does not disclose the thickness of the intermediary film. Kojima also discloses an edible protein matrix for use in creating a composition comprising an intermediary film that would be expected to have greater than 50% processed protein by weight and has a thickness of 0.5-2 mm (abstract). Therefore, it would have been obvious to alter the thickness of the intermediary film of Devro, to a thickness such as that claimed, depending on the intended use for the film.

In regard to claim 2, Devro discloses the processed protein being derived from a non-synthetic mammalian and/or aquatic protein (page 5, line 36 – page 6, line 10).

In regard to claim 4, Devro discloses the intermediary film further comprising a starch (page 6, lines 20-21).

In regard to claim 5, Devro discloses the intermediary film further comprising an oil (page 6, lines 25-33).

In regard to claim 6, Devro discloses the intermediary film further comprising a surface adjunct for modifying the surface characteristics of the film (page 10, lines 34-37).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Devro in view of Kojima, as applied to claims 1, 2, and 4-6 above, in further view of Fetzer et al., U.S. Patent 4,133,901. Devro fails to disclose the moisture content of the intermediary film. Fetzer discloses an edible protein film with a moisture content ranging from 8-50% (column 7, lines 4-10). It therefore would have been obvious to use a moisture content of at least 25% in the invention of Devro in order to allow for the desired flexibility of the

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film and also because such a concentration was taught to be ideal for certain types of products, as taught by Fetzner (column 45, lines 19-30).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Devro in view of Kojima, as applied to claims 1, 2, and 4-6 above, in further view of Nakajima, U.S. Patent 4,670,276. Devro discloses the processed protein being derived from fish skin (page 5, line 36 – page 6, line 10), but does not disclose the use of surimi. Nakajima discloses an edible protein matrix comprising an intermediary film, wherein the processed protein is surimi (column 2, lines 16-21). It therefore would have been obvious to utilize surimi as the processed protein in the invention of Devro in order to achieve the desired taste of the product.

Claims 8, 9, and 20-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devro in view of Kojima, as applied to claims 1, 2, and 4-6 above, in further view of Food Packaging Technology.

In regard to claim 9, Devro discloses an intermediary film being formed into an enveloping structure, but does not specify the manner in which the pouch is formed from the film. However, it was well known to one of ordinary skill in the art to form a pouch, wherein two intermediary preset films are opposed to each other and selected portions thereof are bonded to one another, as evidenced by Food Packaging Technology (pg. 136, Figure 29.15 and 29.4), and therefore, it would have been obvious to use such a conventional method to form the pouch of Devro.

In regard to claims 20, 26, 27, and 30, Devro discloses an intermediary film having greater than 50% processed protein by weight (page 6, lines 35-36 and claim 9)

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being formed into an enveloping structure to retain edible foodstuffs placed therein (page 13, lines 29-31). Devro does not specify the manner in which the enveloping structure is formed, but it was well known to one of ordinary skill in the art to bond film into an enveloping structure through curing as evidenced by Food Packaging Technology (pg. 136, 29.4 Heat Forming Methods), and therefore it would have been obvious to use such a conventional method in forming the pouch of Devro.

In regard to claims 8, 21, 22, and 28, Devro does not specify the manner in which the pouch is formed from the film. However, it was well known to one of ordinary skill in the art to form a pouch from a single preset film and also to have a portion of the pouch not bonded to form an opening into the envelope, as evidenced by Food Packaging Technology (pg. 135, Figure 29.14 and pg. 137-138, Figure 29.16 and 29.4). It therefore would have been obvious to use such conventional methods to form the pouch of Devro.

In regard to claim 23, Devro discloses the processed protein being derived from a non-synthetic mammalian and/or aquatic protein (page 5, line 36 – page 6, line 10).

In regard to claims 24, 25, and 29, it is noted that the addition of a design to the package does not impart patentability to the claims, *per se*.

Response to Arguments

Applicant's arguments with respect to the thickness of the film have been considered but are moot in view of the new ground(s) of rejection.

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Applicant's other arguments filed June 13, 2005, have been fully considered but they are not persuasive.

Applicant argues that the ability to impart visual or tactile features to a proteinacious film is neither disclosed nor suggested by the prior art. However, the use of protein for forming film-like edible items was known to one of ordinary skill in the art, and since the film and its formation into an enclosed structure would have been obvious in view of the prior art as discussed above, it is not seen how the mere addition of a design would distinguish over the prior art.

Applicant also argues that a preset step is not met by the prior art. However, Applicant is directed to pages 137-138 of Food Packaging Technology, which discloses heating films prior to shaping and the use of such a step in form, fill, and seal machines (pg/ 138, 29.4.2). Therefore, the claimed method is not patentable over the prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


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